

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Judge Berman

BHP BILLITON MARKETING INC.,

Plaintiff,

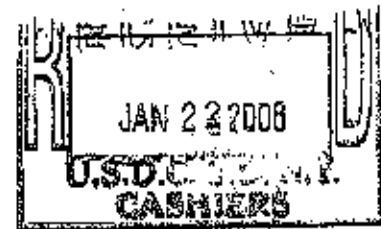
- against -

JEBSENS TRANS-PACIFIC SHIPPING SERVICE  
AS BERGEN NORWAY a/k/a JEBSENS  
TRANS-PACIFIC SHIPPING SERVICES AS  
and KRISTIAN JEBSENS REDERI AS,

Defendants.

08 CV 0533

ECF CASE



VERIFIED COMPLAINT

Plaintiff, BHP BILLITON MARKETING INC. (hereafter referred to as "Plaintiff"), by and through its attorneys, Lennon, Murphy, and Lennon, LLC, as and for its Verified Complaint against the Defendants, JEBSENS TRANS-PACIFIC SHIPPING SERVICE AS BERGEN NORWAY a/k/a JEBSENS TRANS-PACIFIC SHIPPING SERVICES AS ("JTPS") and KRISTIAN JEBSENS REDERI AS, ("KJR")(collectively referred to as "Defendants"), alleges, upon information and belief, as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and 28 United States Code § 1333. Jurisdiction over this matter is also present pursuant to the Federal Arbitration Act, 9 United States Code § 1 *et seq.*, and this Court's federal question jurisdiction, 28 United States Code § 1331.

2. At all times material to this action, Plaintiff was, and still is, a foreign company duly organized and operating under foreign law.

3. Upon information and belief, Defendant JTPS, was, and still is, a foreign corporation, or other business entity, organized under, and existing by virtue of foreign law.

4. Upon information and belief, Defendant KJR was, and still is, a foreign corporation, or other business entity, organized under, and existing by virtue of foreign law and was, and still is, at all material times the alter-ego of JTPS.

5. Upon information and belief, KJR is an operator of sea going vessels and is involved in the carriage and delivery of bulk cargoes by sea.

6. On or about September 8, 2006, Plaintiff and Defendant JTPS entered into a Contract of Affreightment whereby JTPS agreed to supply a sea going vessel to Plaintiff to carry a shipment of sulphur cargoes from Vancouver, British Columbia to "Townsville and/or Adelaide and/or Esperance 1 safe berth in Charterers' option." *Please find attached hereto as Exhibit "1" a copy of the Contract of Affreightment (hereinafter "COA").* The Plaintiff exercised its Options to extend the COA. The second Option was exercised on the 13<sup>th</sup> August 2007 thus extending the COA to 31<sup>st</sup> December 2008. *Please find annexed hereto as Exhibit "2" the e-mail confirming the extension of charter party.*

7. The Plaintiff and JTPS agreed to apply the following freight rates for the tonnage as per below:

Freight (basis free in/out)  
USD\$41.10 pmt to Townsville  
USD\$43.20 pmt for Adelaide  
USD\$43.10 pmt for Townsville & Adelaide  
USD\$49.10 pmt for Townsville & Esperance USD\$49.10 pmt for Adelaide & Esperance

8. Plaintiff had the option of declaring Esperance only liftings at the following rates:

15,000 +/-5% CHOPT	USD\$47.40 pmt
25,000 +/-5% CHOPT	USD\$44.75 pmt
28,000 +/-5% CHOPT	USD\$41.90 pmt

9. JTPS nominated the M/V "GENERAL VILLA," "GENERAL DELGADO" or the "M/V CICLOPE" to perform the carriage of the cargo contemplated by the COA.

10. On December 20, 2007 JTPS informed the Plaintiff that due to the present high market rates compared with the rates agreed upon in the COA, it would not provide the Vessel nominated for the January shipment to Plaintiff under the terms previously agreed and expressed inability to perform the COA as a whole on the basis of the applicable rates. *Please find letter from Defendant annexed hereto as Exhibit "3."*

11. JTPS thus repudiated and/or anticipatorily breached the COA.

12. Plaintiff accepted JTPS' anticipatory breach and/or repudiation of the COA in respect of the January shipment on December 25, 2007, reserving all of its rights to claim the losses/damages arising therefrom and in general to claim losses/damages resulting from the repudiation of the entire COA.

13. Plaintiff took steps to mitigate its damages and entered into a charter for a substitute vessel, the "POS LEADER," to carry the cargo.

14. However, as result of JTPS' anticipatory breach and/or repudiation of the COA, as best as may be reasonably approximated, Plaintiff still sustained damages in the total principal amount of \$2,058,300.00, in respect of the January shipment only, exclusive of interest, arbitration costs and attorney's fees resulting from the difference in freight rates under the COA and the substitute charter party. *See invoice and calculation annexed hereto as Exhibits "4" and "5" respectively.*

15. The COA provides that "the parties shall seek to resolve any dispute or claim

arising out of or in relation to [the] Contract by friendly discussion. Any party may notify the other Party of its desire to enter into consultation to resolve a dispute or claim by mutual agreement."

16. The COA further provides that if no settlement can be reached, the dispute shall then be submitted for arbitration as per Clause 55 of the Charter Party.

17. Pursuant to the COA, if settlement cannot be reached, all disputes arising thereunder are to be submitted to arbitration in London with English Law to apply.

18. The Plaintiff and JTPS held a meeting to attempt to resolve the dispute on January 8, 2008, however a mutually acceptable agreement could not be reached.

19. Thus, in consequence of JTPS' failure to pay its damages, Plaintiff is preparing to commence arbitration under the COA.

20. Interest, costs and attorneys' fees are routinely awarded to the prevailing party in arbitration pursuant to English Law. As best as can now be estimated, Plaintiff intends to claim the following amounts:

A.	Principal claim:	\$2,058,300.00
B.	Estimated interest on claims: 3 years at 8%, compounded quarterly	\$553,255.33
C.	Estimated attorneys' fees and arbitration costs/expenses:	\$500,000.00
<b>Total</b>		<b>\$ 3,111,555.33</b>

21. Plaintiff reserves its right to amend the complaint to include additional damages incurred as a result of JTSS's actions, including but not limited to, those incurred due to the differential rates of demurrage in the COA and the substitute charter and/or in respect of the non performance/repudiation of the remainder of the COA and/or the corresponding shipments.

22. Upon information and belief, Defendant JTPS is a shell-corporation through which Defendant KJR conducts its business.

23. Upon information and belief, Defendant JTPS has no separate, independent identity from Defendant KJR.

24. Defendant KJR is the alter-ego of Defendant JTPS because it dominates and disregards JTPS' corporate form to the extent that KJR is actually carrying on JTPS' business and operations as if the same were its own, or vice versa.

25. Upon information and belief, Defendant KJR uses Defendant JTPS as its "chartering arm" or as a "pass through" entity such that it can insulate itself from creditors relating to its commercial obligations and in particular its vessel charters/contracts of affreightment.

26. Upon information and belief, JTPS is controlled by KJR, a holding entity for the majority of interests of Norwegian shipping magnate Atle Jebsen and his sons, one of which is Bjorn Jebsen.

27. Upon information and belief, JTPS is one of several companies which are operated, controlled and managed as a single economic enterprise known as the "JEBSENS GROUP" and/or the "KJR GROUP" which is ultimately controlled by Mr. Atle Jebsen.

28. Upon information and belief, Defendants JTPS and KJR have the exact same registered address: Sandbrugaten 5, Bergen, 5003, Norway.

29. Furthermore, upon information and belief, JTPS and KJR have the exact same contact details. Both JTPS and KJR use the following phone and facsimile numbers respectively: 47 53 05 00 00 and 47 53 05 00 51.

30. In addition, upon information and belief, Defendants JTPS and KJR have overlapping directors.

31. Upon information and belief, both Bjorn Jebsen and Atle Jebsen sit on both boards of directors.

32. Furthermore, upon information and belief, KJR and JTPS have overlapping managers.

33. Upon information and belief, both KJR and JTPS utilize the exact same managers: Salve Sandvik and Michael Oliver Ross.

34. Upon information and belief, JTPS has no employees of its own (outside of the managers above) and another company owned/controlled by KJR (Jebsens Management AS), manages all controlling activities at JTPS.

35. Upon information and belief, KJR owns 100% of the shares in JTPS.

36. Furthermore, upon information and belief, Mr. Atle Jebsen owns 100% of the stock of KJR, while also sitting on KJR's and JTPS's board of directors.

37. Upon information and belief, JTPS has little equity and is undercapitalized.

38. Upon information and belief, JTPS' "profit" is effectively transferred to KJR.

39. Upon information and belief, KJR uses JTPS to "hold" contracts to ship dry bulk cargo from the US West Coast to Australia without proper consideration.

40. Based on the foregoing, as well as other activities, KJR and JTPS should be considered as a single economic unit with no corporate distinction between or among them, rendering each liable for the debts of the other, and all assets of KJR susceptible to attachment and/or restraint for the debts of JTPS.



41. By virtue of the foregoing, KJR is properly considered a party to the subject contract as the alter ego and/or prime mover and controller of Defendant JTPS.

42. In the further alternative, Defendants are partners and/or joint venturers such that KJR is now, or will soon be, holding assets belonging to JTPS, or vice versa.

43. In the further alternative, Defendants are affiliated companies such that KJR is now, or will soon be, holding assets belonging to JTPS, or vice versa.

44. The Defendants cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, but, upon information and belief, Defendants have, or will have during the pendency of this action, assets within this District and subject to the jurisdiction of this Court, held in the hands of one or more garnishees which are believed to be due and owing to the Defendants.

45. The Plaintiff seeks an order from this court directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, and also pursuant to the United States Arbitration Act, 9 U.S.C. §§ 1 and 8, attaching, *inter alia*, any assets of the Defendants held by the aforesaid garnishee for the purpose of obtaining personal jurisdiction over the Defendants, and to secure the Plaintiff's claim as described above.

**WHEREFORE**, Plaintiff prays:

A. That process in due form of law issue against the Defendants, citing them to appear and answer under oath all and singular the matters alleged in the Verified Complaint;

B. That the Court retain jurisdiction to compel the Defendant(s) to arbitrate in accordance with the United States Arbitration Act, 9 U.S.C. § 1 *et seq.*;

C. That since the Defendants cannot be found within this District pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, also pursuant to the United States Arbitration Act, 9 U.S.C. §§ 1 and 8, attaching all goods, chattels, credits, letters of credit, bills of lading, effects, debts and monies, tangible or intangible, or any other funds held by any garnishee within the District which are due and owing to the Defendants, in the amount \$3,111,555.33 calculated to date to secure the Plaintiff's claims, and that all persons claiming any interest in the same be cited to appear and pursuant to Supplemental Admiralty Rule B answer the matters alleged in the Complaint;

D. That this Court recognize and confirm any arbitration award(s) or judgment(s) rendered on the claims set forth herein as a Judgment of this Court.

E. That this Court retain jurisdiction over this matter through the entry of any judgment or award associated with any of the claims currently pending, or which may be initiated in the future, including any appeals thereof;

F. That this Court award the Plaintiff its attorneys' fees and costs of this action; and

G. That the Plaintiff have such other, further and different relief as the Court may deem just and proper.

Dated: New York, NY  
January 22, 2008

The Plaintiff,  
BHP BILLITON MARKETING INC.

By: *Nancy R. Peterson*  
Patrick F. Lennon (PL 2162)  
Nancy R. Peterson (NP 2871)



LENNON, MURPHY & LENNON, LLC  
The Gray Bar Building  
420 Lexington Ave., Suite 300  
New York, NY 10170  
Phone (212) 490-6050  
Fax (212) 490-6070  
[pfi@lenmur.com](mailto:pfi@lenmur.com)  
[nrp@lenmur.com](mailto:nrp@lenmur.com)

**ATTORNEY'S VERIFICATION**

State of New York     )  
                              )     ss.:   City of New York  
County of New York    )

1.     My name is Nancy R. Peterson.

2.     I am over 18 years of age, of sound mind, capable of making this

Verification, and fully competent to testify to all matters stated herein.

3.     I am an attorney in the firm of Lennon, Murphy & Lennon, LLC, attorneys for the Plaintiff.

4.     I have read the foregoing Verified Complaint and know the contents thereof and believe the same to be true and accurate to the best of my knowledge, information and belief.

5.     The reason why this Verification is being made by the deponent and not by the Plaintiff is that the Plaintiff is a business organization with no officers or directors now within this District.

6.     The source of my knowledge and the grounds for my belief are the statements made, and the documents and information received from, the Plaintiff and agents and/or representatives of the Plaintiff.

7.     I am authorized to make this Verification on behalf of the Plaintiff.

Dated:     New York, NY  
           January 22, 2008

  
Nancy R. Peterson

**EXHIBIT "I"**

**CONTRACT OF AFFREIGHTMENT**

**DATED 8<sup>th</sup> September 2006**

**SHIPMENT OF SULPHUR CARGOES**

**ORIGINAL**

**PREAMBLE**

This Contract entered into on the 8<sup>th</sup> day of September 2006 between BHPB Freight Pty Ltd as agents for and on behalf of BHP Billiton Marketing Inc ("Charterers") and Jøbsens Trans-Pacific Shipping Services AS Bergen, Norway ("Owners"). It is agreed that transportation will be performed subject to the terms and conditions of this Contract, which includes this Preamble, the "BHPVOY 2005" charter party, and other rider clauses attached herewith.

**BASE CONTRACT TERMS**

**1 Shipment Period**

The term of this Contract shall be for 6 Months firm (1 January 2007 to 30 June 2007) with a further 6 months (1 July 2007 to 31 December 2007) in CHOPT to be declared by April 1st 2007, with a further optional 1 year in CHOPT (1 January 2008 to 31 December 2008) which shall be declarable by October 1st, 2007..

**2 VESSELS & SERVICE**

**2.1 Vessel**

Owner confirms vessel is suitable in all respects for above trade

Owners responsibility to ensure the vessel satisfies all load and discharge port restrictions and regulations, including all Australian Quarantine requirements.

Vessel to be fully ITF and ISCC compliant

Vessels to be max 15yrs with min 25mt cranes (and if vessel is grab fitted charterer has ability to utilise for loading and discharging free of charge)

Owners have the liberty to use the following 3 vessels, with owners to pay max London Lloyds over age premium.

- m.v General Villa - gantry - built 1985
- m.v.General Daigado - gantry - built 1985
- m.v. Ciclope - craned - built 1985

Vessel nomination to be subject to Rightship Vetting Assessment and shippers / receivers approval declarable within 2 working days after receipt of official nomination on charterer's pro forma vessel nomination and fully completed Rightship vetting questionnaire.

3. SCHEDULING AND TONNAGE

Annual Tonnage: 120,000mt - 200,000mt +/- 10% CHOPT  
Shipment sizes: 5000mt to 20,000mt +/- 5% CHOPT  
Sulphur to be shipped as full or part cargo in owners option  
Shipment sizes to be declared / confirmed on nomination of laycans

Charterers to nominate a 7 day laycan at least 25 days prior to the first day of the laycan. For Esperance only lifting's Charterers to give 45 days notice of required laycan. Owners to nominate a performing vessel or substitute latest 14 days prior to first day of laycan with actual performing vessel to be nominated/declared latest 7 days prior to opening of lay days.

Vessel nomination to be subject to Rightship Vetting Assessment and shippers / receivers approval declarable within 2 working days after receipt of official nomination on charterer's pro forma vessel nomination and fully completed Rightship vetting questionnaire.

Charterers shall provide a 6-month period tentative shipping schedule which to be tentatively updated on a monthly basis

4. LOADING AND DISCHARGING PORTS AND TERMS

LOADING (See Charter Party Clause 8 and 10)

The vessel shall proceed to and load at Vancouver BC: 1 or 2 safe berth in Chopt(s), always afloat or in Charterers option Port Moody: 1 or 2 safe berth(s), in Chopt always afloat or in Charterers option Vancouver BC 1 safe berth and Port Moody 1 safe berth in Chopt, always afloat.

All time and costs for preload vessel inspections for owners account

The cargo shall be loaded at the average rate of 12,000 metric tons per weather working days of 24 consecutive hours Sundays local and national holidays always included (SHINC).

Notice of Readiness (NOR) may be tendered on any day, at any time Sundays Holidays included (SHINC), whether in free pratique or not, whether in berth or not. With 12hrs turn time, unless sooner commenced, where actual time used to count.

DISCHARGING (See Charter Party Clause 9 and 11)

At each discharging port charterers required discharge berth always to be used.

The vessel shall proceed to and discharge at Townsville and/or Adelaide, and/or Esperance 1 safe berth in Charterers' option, with discharge always in geographical rotation and always afloat.

Townsville

The cargo shall be discharged at the average rate of 4,500 metric tons per weather working days of 24 consecutive hours Sundays local and national holidays always excluded, unless used where actual time used shall count (SHEX UL)

Notice of Readiness (NOR) may be tendered on any day, at any time Sundays Holidays included (SHINC), whether in free pratique or not, whether in berth or not. With 12hrs turn time, unless sooner commenced, where actual time used to count.

#### Adelaide

The cargo shall be discharged at the average rate of 4,500 metric tons per weather working days of 24 consecutive hours Sundays local and national holidays always excluded, unless used where actual time used shall count (SHEX UU)

Notice of Readiness (NOR) may be tendered on any day, at any time Sundays Holidays included (SHINC), whether in free pratique or not, whether in berth or not. With 12hrs turn time, unless sooner commenced, where actual time used to count.

#### Esperance

The cargo shall be discharged at the average rate of 8,000 metric tons per weather working days of 24 consecutive hours Sundays local and national holidays always included (SHINC).

Notice of Readiness (NOR) may be tendered on any day, at any time Sundays Holidays included (SHINC), whether in free pratique or not, whether in berth or not. With 12hrs turn time, unless sooner commenced, where actual time used to count.

### 5. FREIGHT RATE (USD per metric ton) (see also C/p clause 3,4 and 5)

#### 5.1 Freight rates for firm period 1 Jan 07 to 30 Jun 07 & CHOPT optional period 1 July 07 to 31 Dec 07

a) Owners and Charterers have agreed to apply the following freight rates for the tonnage as per below:

Freight (basis free in/out)

USD\$41.10 pmt for Townsville

USD\$43.20 pmt for Adelaide

USD\$43.10 pmt for Townsville & Adelaide

USD\$49.10 pmt for Townsville & Esperance USD\$49.10 pmt for Adelaide & Esperance

Charterers have the option to declare Esperance only liftings:

15,000mt +/- 5 % CHOPT USD\$47.40 pmt

25,000mt +/- 5 % CHOPT USD\$44.75 pmt

28,000mt +/- 5 % CHOPT USD\$41.90 pmt

b) Owners have the liberty to use the following 3 vessels, with owners to pay max London Lloyds over age premium:

- M.v. General Villa - gantry - built 1985

- M.v. General Delgado - gantry - built 1985

- M.v. Ciclope - craned - built 1985



Freight (basis free in/out)  
 USD\$39.10 pmt for Townsville  
 USD\$41.20 pmt for Adelaide  
 USD\$41.10 pmt for Townsville & Adelaide  
 USD\$47.10 pmt for Townsville & Esperance USD\$47.10 pmt for Adelaide & Esperance

### 5.2 Freight rates for optional period 1 Jan 08 to 31 Dec 08

a) Owners and Charterers have agreed to apply the following freight rates for the tonnage as per below:

Freight (basis free in/out)  
 USD\$42.55 pmt for Townsville  
 USD\$44.75 pmt for Adelaide  
 USD\$44.65 pmt for Townsville & Adelaide  
 USD\$50.65 pmt for Townsville & Esperance  
 USD\$50.65 pmt for Adelaide & Esperance

Charterers have the option to declare the option for Esperance only liftings:

15,000mt +/- 5 % CHOPT	USD\$48.95 pmt
25,000mt +/- 5 % CHOPT	USD\$45.95 pmt
28,000mt +/- 5 % CHOPT	USD\$43.45 pmt

b) Owners have the liberty to use the following 3 vessels, with owners to pay max London Lloyds over age premium

- M.v. General Villa - gantry - built 1985
- M.v. General Delgado - gantry - built 1985
- M.v. Ciclope - craned - built 1985

Freight (basis free in/out)  
 USD\$40.65 pmt for Townsville  
 USD\$42.75 pmt for Adelaide  
 USD\$42.65 pmt for Townsville & Adelaide  
 USD\$48.65 pmt for Townsville & Esperance  
 USD\$48.65 pmt for Adelaide & Esperance

### 5.3 Alternative Cargoes and Load/Discharge Ports

Subject to Owners agreement on scheduling, laydays and port rotations, freight differentials for other cargoes and/or loading and/or discharging ports and cargo rate combinations other than that of Sulphur as agreed above, are to be calculated on the basis of the proforma vessel below to give the same timecharter equivalent of US\$17,000 per day as the voyage USWC (Longbeach/Vancouver BC range) to Australian Ports (basis freight for Sulphur). Owner to calculate timecharter equivalent freight rates for other loading or discharging port(s) basis different port costs and load/discharge terms (which will be provided on a case by case basis) at any time during the period of this contract upon request from the Charterer.

Pro-forma vessel's particulars:

DWT 28,500MT  
DRAFT 9.70 M SSW  
TPC 35.0 MT  
SPEED (BALLAST/LADEN) 14.0/13.5 KNOTS  
CONSUMPTION BALLAST/LADEN(MT) 21.0 / 23.0 (380cst)  
IN PORT CONS. (MT) 2.5 (380cst) IFO per day & 0.5 MDO per port.

Bunker price to be based upon Vancouver Washington Platts for calculation purposes  
Alternative cargo to be carried to always be within Owners (Jebsons Transpac vessels) Cargo and Trading  
exclusions  
All other terms and conditions (i.e. scheduling & nominations etc) as per agreed Sulphur terms  
conditions.

**6 BUNKER ESCALATION**

No bunker escalation.

**7 DEMURRAGE / DESPATCH (See Charter Party clause 15)**

Demurrage USD\$15,000 Per Day & Despatch USD\$7,500 Per Day, both ends.

**8 DISPUTE RESOLUTION**

The parties shall seek to resolve any dispute or claim arising out of or in relation to this Contract  
by friendly discussion. Any party may notify the other Party of its desire to enter into consultation  
to resolve a dispute or claim by mutual agreement.

If no settlement can be reached, the case in dispute shall then be submitted for arbitration as per  
Clause 55 of the Charter party.

**9 GOVERNING LAW**

This Contract will be subject to English Law and jurisdiction.

**10 ASSIGNMENT**

Owner shall not assign or transfer any of its rights or obligations hereunder nor sub contract nor  
delegate the whole or any part of this contract without the prior consent of the Charterer.

IN WITNESS WHEREOF, the Parties have caused this agreement to be executed by their duly authorised officers on the date of the year as shown above.

EXECUTED by BHPB Freight Pty Ltd as  
agents for and on behalf of BHP Billiton  
Marketing Inc, by its duly authorised  
representative:

Signature

For and on behalf of  
BHPB FREIGHT PTY LTD

Name (block letters)

EXECUTED by OWNERS Jepsens Trans-  
Pacific Shipping Services AS Bergen by its  
duly authorised representative:

Signature

For and on behalf of  
Jepsens Trans-Pacific Shipping

S. Jepsens AS Bergen

Name (block letters)

JEBSENS INTERNATIONAL (AUSTRALIA) PTY LTD  
AS AGENTS ONLY



## VOYAGE CONTRACT (2005)

1. Place and Date Melbourne 8 <sup>th</sup> September 2006	
2. Owner and Place of Business Jepsens Trans-Pacific Shipping Services AS Bergen Norway	3. Charterer and Place of Business BHPB Freight Pty Ltd as agents for and on behalf of BHP Billiton Marketing Inc
4. Vessel's Name Jepsens TEN	5. Flag and Age TBN
6. Vessel's Desc. otherwise as per Appendix A Jepsens TBN	7. Itinerary TBN
8. Loading Port(s) See Preamble clause 4	9. Discharge Port(s) Tasmanville: 1 safe berth, always offset Adelaide: 1 safe berth, always offset Esperance: 1 safe berth, always offset Also refer to Preamble Clause 4
10. Full and complete Part Cargo and Quantity AS PER PREAMBLE CLAUSE 3	11. Laycan Commencement / Cancelling Refer to preamble clause 1
12. Freight Rate AS PER PREAMBLE CLAUSE 6  Free in and free out and stowage trimmed	13. Laytime for Loading Port(s)  AS PER PREAMBLE CLAUSE 4
14. Demurrage / Despatch USD\$15,000 / USD\$7,500 pro rata part thereof	15. Laytime for Discharge Port(s) AS PER PREAMBLE CLAUSE 4
16. Turn Time Load Port(s) 12 Hours, USC / UATUTC	17. Turn Time Discharge Port(s) 12 Hours, USC / UATUTC
18. NOR at Load Port(s) ATON SHING, WIGON WIPON	19. NOR at Discharge Port(s) ATON SHING, WIGON WIPON
20. Agents at Load Port (s) Charterers	21. Agents at Discharge Port(s) Charterers
22. Address Commission 3.75%	23. Brokerage Nil

*Delete italics where appropriate.*

It is mutually agreed that this Contract shall be performed subject to the conditions contained in the Contract attached. In the event of a conflict of conditions, the provisions of this face page note shall prevail over those in the Contract attached overleaf.

Signature (Owner) 	Signature (Charterer(s)) 
For and on behalf of Jepsens Trans-Pacific Shipping Services AS Bergen JEPSSENS INTERNATIONAL (AUSTRALIA) PTY LTD AS AGENTS ONLY	For and on behalf of BHPB FREIGHT PTY LTD

- 1 1. It is this day mutually agreed between the party mentioned in Box 2 as Owner/Disponent Owner/Time Charter  
2 Owner (hereinafter called Owner) of the Vessel named in Box 4, classed Lloyd's + 100 A1 (or equivalent at a  
3 classification society that is a member of the International Association of Classification Societies), described in  
4 Box 5 & 6 and further detailed per Appendix A and the party mentioned in Box 9 as Charterer that
- 5 2. The said Vessel being warranted tight, staunch, strong and in every way fitted for the voyage, shall after delivery of  
6 her previous cargo, proceed with all convenient speed to the loading port(s) or place(s) stated in Box 8 and there  
7 load always afloat as directed by Charterer or its designated representatives, cargo as stated in Box 10, not  
8 exceeding what she can reasonably stow and carry and being so loaded, shall with all convenient speed proceed  
9 to the discharging port(s) or place(s) stated in Box 9 and there deliver the cargo, always afloat as directed by  
10 Charterer or their designated representatives.
- 11 Cargo is always to be loaded, stowed and discharged in accordance with the rules and requirements of IMO.
- 12 3. Freight Party  
13 Freight, inclusive of all port charges, pilotages, light dues and all other dues usually paid by Vessel, shall be paid  
14 at the rate stated in Box 12.
- 15 4. Initial Freight Payment  
16 Charterer shall pay freight on Bill of Lading/Gross weight in United States Dollars to Owner's account as per  
17 Appendix B.  
18 55 percent of Bill of Lading quantity shall be paid within five (5) banking days of signing and releasing freight  
19 prepayable freight payable as per contract, at Charterer's Option, Bills of Lading.  
20 Discountless and non-refundable whether Vessel and/or cargo is lost or not lost.  
21 The balance of freight, together with settlement of despatch and/or demurrage if applicable, shall be paid within  
22 seven (7) days after right and true delivery of the cargo and tender of time sheets, Statement of Facts and signed  
23 Notice of Readiness with Owner's calculations of any demurrage or despatch incurred at the loading and  
24 discharging ports.
- 25 5. Settlement of Balance of Freight/Demurrage  
26 Freight shall be finalized on the basis of the Bill of Lading/Gross quantity and the balance of freight shall be  
27 settled as per Clause 4.
- 28 6. Bills of Lading  
29 The Master shall authorize the agents at load port to sign and release on his behalf three negotiable Bills of Lading  
30 or non-negotiable Seaway-Bills if requested by Charterer, at any time Charterer or Shippers request this for any  
31 quantity loaded up to that time. Shippers weights in accordance with the shore scales/bellyweight/bridge/draft  
32 survey (in Charterer's exclusive option) at the loading port shall be accepted as tonnage shipped and Mate's  
33 Receipts shall be drawn up accordingly. Bills of Lading or Seaway-Bills are always to be drawn up in conformity  
34 with the Mate's Receipts. Upon completion of loading Owner shall release three negotiable Bills of Lading or non-  
35 negotiable Seaway-Bills, caused "Freight Prepaid" or as Charterer's option "Freight Payable as per Contract", to  
36 Shippers or their representatives.
- 37 7. Laydays and Cancellation  
38 Time for loading shall not commence before "Laycan Commencement" as per Box 11.  
39 Charterer shall have the right to cancel this Contract or at its option the voyage in question should there be any  
40 material misrepresentation made by Owner in respect of the Vessel's particulars, the Vessel's suitability to perform  
41 the voyage, the Vessel's position and/or itinerary or should the Vessel not have tendered Notice of Readiness in  
42 accordance with Clause 10 on or before the "Laycan Cancellation" as per Box 11.
- 43 8. Loading Terms  
44 The cargo shall be loaded at the average rate stated in Box 13 per weather working day of 24 consecutive hours.  
45 Time shall not count for opening and closing of hatches at commencement and completion of loading at each port,  
46 even if Vessel is on Demurrage.
- 47 9. Discharging Terms  
48 The cargo shall be discharged at the average rate stated in Box 15 per weather working day of 24 consecutive  
49 hours. Time shall not count for opening and closing of hatches at commencement and completion of discharge at  
50 each port, even if Vessel is on Demurrage.
- 51 10. Tendering of Notice of Readiness at Load Port(s)  
52 Notice of Readiness (NOR) at load port shall be tendered in writing by facsimile, email or courier, to  
53 Charterer/Charterer's agent only as per Box 18 after the Vessel has arrived and is in all respects ready and in free  
54 pratique (relevant contact details to be provided on fixture). If the loading berth or anchorage is unavailable at this  
55 time the Vessel may tender NOR from the normal recognized waiting place designated by the Port Authority, even  
56 if outside the normal port limits and whether or not the Vessel has been cleared by customs and/or quarantine  
57 authorities.  
58 Abandonment of cargo, Owner/Disponent Owner is not to tender, nor is Charterer obliged to accept, Vessel's NOR prior to  
59 commencement of laycan, unless otherwise previously agreed. At Loadport, owner/master is able to tender, but



*Charterers are not obliged to accept vessel's NOR prior to commencement of laycan, unless otherwise previously agreed.*

60 Time for loading shall count as stated in Box 13 after NOR has been tendered and accepted by Charterer.

61 In the event that Charterer or Shippers can arrange to load before time commences to count, Master shall allow  
62 work to be done, in which case half actual time used to count. Time used by the Vessel in proceeding from waiting  
63 place or anchorage to loading berth or anchorage and making ready for loading (including obtaining customs  
64 clearance and pratique) and any time lost before berthing (after tendering NOR) due to delay to the Vessel, shall  
65 not count as laytime or time on demurrage unless such delay is directly caused by action of Charterer.

66 11. Tendering Notice of Readiness at Discharging Port(s)  
67 Notice of Readiness (NOR) at discharge port shall be tendered in writing by facsimile, email or courier, to  
68 Charterer/ Charterer's agent only as per Box 13 after the Vessel has arrived and is in all respects ready and in free  
69 pratique (relevant contact details to be provided on fixture). If the discharging berth or anchorage is unavailable at  
70 the time the Vessel may tender NOR from the normal recognised waiting place designated by the Port Authority,  
71 even if outside the normal port limits and whether or not the Vessel has been cleared by customs and/or  
72 quarantine authorities.

73 Time for discharging shall count as per Box 17 after NOR has been tendered and accepted by Charterer to  
74 Charterer's/ Charterer's agent(s). However  
75 In the event that Charterer or Shippers can arrange to discharge before time commences to count, Master shall  
76 allow work to be done, in which case half actual time used shall count. Time used by the Vessel in proceeding  
77 from waiting place or anchorage to discharging berth or anchorage and making ready for discharging (including  
78 obtaining customs clearance and pratique) and any time lost before berthing (after tendering NOR) due to delay to  
79 the Vessel, shall not count as laytime or time on demurrage unless such delay is directly caused by action of  
Charterer.

80 12. Laytime at Additional Ports  
81 At the second (and subsequent) loading and/or discharging port(s) the Vessel shall tender NOR and laytime or  
82 time on demurrage shall resume counting as per Clauses 10 and/or 11. Time counting at the second (and  
83 subsequent) loading and/or discharging port(s) shall always be subject to the exceptions specified in Clause 8  
84 and/or 9.

85 13. Shifting Cost and Time  
86 Where two or more berths or anchorages at any loading and discharging port have been agreed, shifting costs including  
87 bunkers consumed shall be for Owner's account. Time so used shall not count as laytime or time on demurrage.  
Shifting time between berths when shifts are required to continue or complete, loading or discharging cargo  
being carried under this COA to count as laytime.

88 14. Warping  
89 The Vessel shall move along any one berth or installation, as reasonably required by Charterer or Terminal  
90 Operator, solely for the purpose of making any hatch or hatches available to the loading or discharging facilities at  
91 the berth or installation. All costs onboard the Vessel including bunkers shall be for Owner's account. Time used  
92 for warping shall not count as laytime or time on demurrage and warping to be done by Vessel's crew, where local  
93 regulations permit.

94 15. Demurrage and Despatch  
95 Demurrage at the rate specified in Box 14 for laytime exceeded in loading and/or discharging shall be paid by  
96 Charterer. Despatch at the rate specified in Box 14 for laytime saved in loading and/or discharging shall be paid by  
97 Owner. Settlement shall be in accordance with Clause 4. Laytime shall be non-reversible.

98 16. Overtime  
99 All overtime expenses at loading and discharging port(s) shall be for account of the party ordering the overtime. If  
100 overtime is ordered by port authorities or the party controlling the loading or discharging terminal or facility, such  
101 expenses shall be for Charterer's account. Overtime expenses for the Vessel's officers and crew shall always be  
102 for Owner's account.

103 17. Stowage  
104 Provided the cargo is not being loaded or discharged under liner terms as per Clause 5 & 9, it shall be loaded,  
105 stowed, secured or spout/dumped/machined trimmed and discharged free of risk to the Vessel and to the Master's  
106 satisfaction in respect of seaworthiness. Stowage at loading and discharging ports are to be appraised and paid  
107 for by Shipper(s), Receiver(s) or Charterer and shall work under the supervision of the Master.

108 If it is required by the custom of the port, the Vessel's crew shall operate free of expense to Charterer the Vessel's  
109 cargo gear, if fitted, to load and unload mechanical equipment used in bulk cargo operations. If Charterer requires  
110 it and local regulations permit, crew are to carry out cargo handling operations.

111 18. Lighterage  
112 Charterer has the option to load from barges sent alongside and/or discharge into barges sent alongside.  
113 Lighterage, if any, shall be at Charterer's risk and expense, including such tendering necessary for safe  
114 operations, with forwarding always to be to Master's satisfaction to avoid damage to the vessel.

115 19. Hold Cleanliness  
116 At the loading port(s) the Vessel's holds shall be suitable in all respects (owners are not allowed to nominate /



- ~~Use combination carriers under this contract which shall include a gas-free certificate if~~  
 117 ~~the vessel is a combination carrier~~ to receive the cargo to be loaded under this Contract to the satisfaction of an  
 118 independent surveyor and/or such recognized local authority as the regulations or Shippers may require. If the  
 119 Vessel's holds are found to be unsuitable, any time lost until the Vessel is accepted and is ready in all respects as  
 120 if the Vessel has not originally been rejected to load, shall not count as laytime or as time on demurrage. Any  
 121 expenses directly attributable thereto including but not limited to standby of trucks, labour and mechanical  
 122 equipment shall be for Owner's account.
- 123 20. **Hold Accessibility**  
 124 Vessel's holds and tank tops shall be suitable for the utilization of crabs and any other mechanical equipment  
 125 used in loading and discharging operations. No cargo shall be loaded in any space which is inaccessible or  
 126 unsuitable for such equipment.
- 127 21. **Lighting**  
 128 The Vessel shall give, free of expense to Charterer, full use of her lighting on deck and in the cargo compartments  
 129 which shall be adequate for all cargo operations.
- 130 22. **Vessel Deficiencies**  
 131 In the event of a deficiency affecting the Vessel's ability to ballast and de-ballast or any other equipment, required  
 132 for the loading and discharging operations, any time lost not to count as laytime or time on demurrage. All direct  
 133 and defined costs  
 134 and expenses incurred as a result of any such deficiency shall be for Owner's account.
- 134 23. **Trading Certificate**  
 135 Owner undertakes as a condition that throughout the term of this Contract the Vessel shall be in all respects  
 136 eligible under applicable conventions, laws and regulations for trading freely to the ports and places as specified  
 137 in the Contract and that at all times the Vessel shall have on board for inspection by the appropriate authorities all  
 138 certificates, reports, records, compliance letters and other documents required for such services, including but not  
 139 limited to certificates of financial responsibility for pollution.
- 140 24. **International & Local Regulations**  
 141 The Vessel shall comply with all applicable international and local laws and regulations, at any port of call under  
 142 this Charter Party. All time lost by reason of the relevant authority declaring the Vessel to be in non-compliance  
 143 with any of the items mentioned shall not count as laytime or as time on demurrage and any expenses directly  
 144 attributable thereto including but not limited to standby of trucks, labour and mechanical equipment shall be for  
 145 Owner's account.
- 146 25. **Restrictions, Routing & Rotation**  
 147 The Vessel shall proceed to the first or sole discharging port via the most direct route unless otherwise agreed.  
 148 Loading and discharging port(s) rotation shall be in Owner's option, unless otherwise agreed.
- 149 Prior to arrival at loading and discharging port(s) Owner and Master to be solely responsible to determine the  
 150 applicable size, draft, length, beam and air draft limitations and any other restrictions.
- 151 26. **Transfer**  
 152 Charterer shall have the privilege of transferring part or whole of this Contract to others, guaranteeing to Owner  
 153 due fulfillment of this Contract.
- 154 27. **Notices**  
 155 Owner or Master shall tender 20/15/10 day approximate notices, followed by 7/5/3/2/1 days definite notices of  
 156 Vessel's expected time of arrival (ETA) at the loading port(s) to the agents and Charterer.
- 157 Owner or Master shall tender 20/15/10 days approximate notices, followed by 7/5/3/2/1 days definite notices of  
 158 Vessel's expected time of arrival (ETA) at the discharge port(s) to the agents and Charterer.
- 159 Charterer is to be kept advised of any alteration in the Vessel's expected readiness to load or discharge.
- 160 Should Owner and/or Master fail to give any of the definite notices, then 24 hours shall be added to the allowed  
 161 laytime for each failure by Owner and the Master to do so.
- 162 28. **Agents**  
 163 The Vessel shall be consigned to Charterer's nominated agents as specified in Box 20 at load port and Box 21 at  
 164 discharge port, unless otherwise agreed, Owner paying customary fees.
- 165 29. **Draft Survey**  
 166 If a draft survey is required to establish the Bill of Lading weight as per Clause 6, Charterer, Shipper(s) and/or  
 167 Receiver(s) shall appoint and pay for the surveyor. Time used for the draft survey shall neither count as laytime  
 168 nor time on demurrage. Should the draft survey be at the request of the vessel / master then all time shall not  
 169 count as laytime nor time on demurrage.
- 169 While the surveyor is taking draft readings and/or tank soundings, Master is not to take on board or pump ballast  
 170 at load and discharge ports without obtaining permission from Charterer, and Vessel is not to take on, release or  
 171 switch from one tank or other compartments to another any ballast, fresh water or fuel oil.

- 173 30. Non-presentation of Bills of Lading  
174 If requested by Charterer, the Master shall release all or part of the cargo at the discharging port(s) without  
175 presentation of original Bills of Lading. Prior to discharge Charterer shall provide Owner a Letter of indemnity as  
176 per Owner's P&I club form but without a bank guarantee. Such Letter of indemnity shall automatically become null  
177 and void and to be promptly returned to Charterer upon presentation of the original Bill of Lading to Owner or  
Master.
- 178 31. Change of Ownership/Management  
179 The Vessel shall not change ownership, flag, class, technical and/or crew management ("a change") during the  
180 currency of this voyage without Charterer's prior approval which shall not be withheld unreasonably.
- 181 If and when a request to approve a change is received from Owner, the proposed new Owner and/or managers  
182 shall be assessed by Charterer's vetting officer prior to Charterer's approval being granted.
- 183 32. ITF and Boycott  
184 Owner undertakes as a condition that the present terms and conditions of employment of the crew comply with an  
185 ITF Agreement or a bona fide Trade Union Agreement that is acceptable to the ITF and their representatives and  
186 will remain so for the duration of this Contract. In the event of loss of time and/or extra expenses incurred due to  
187 boycott of the Vessel (whether actual or threatened) and/or dispute with labour because of the Vessel's flag or  
188 nationality of Owner, Master, Officers or crew are employed, such time shall neither count as laytime nor time on  
189 demurrage and such extra expenses shall be for Owner's account.
- 190 33. Strike Clause  
191 Time lost in loading and/or discharging by reason of any of the following causes shall neither count as laytime nor  
192 time on demurrage: strikes, lockouts or stoppages of personnel connected with mining, production, port or facility  
193 services or any transport and/or handling of the cargo whether inland or at the port or facility. Furthermore,  
194 Charterer, Shipper(s) and/or Receiver(s) shall not be liable or otherwise responsible for delays in loading and/or  
195 discharging the Vessel if prevented by any of the foregoing causes.
- 196 If there is a strike, lockout or stoppage, as defined above, at the loading port or facility prior to the Vessel's arrival  
197 there, Owner may request from Charterer a declaration as to whether Charterer agrees to maintain the voyage  
198 calculating laytime as if there were no strike, lockout or stoppages. If Charterer has not made such a declaration  
199 within 48 hours (excluding weekends) of such request, Owner then has the option of cancelling the voyage without  
200 any liability to Owner or Charterer.
- 201 Owner shall have the liberty to sail from a loading port or loading facility affected by strike, lockout or stoppage as  
202 defined above, without the cargo or sail with any cargo forming part of the intended shipment on expiry of 48  
203 hours' notice of Owner's intention to do so which in any case shall not be delayed by Owner until at least 72 hours  
204 have elapsed since the Vessel's arrival at or off the port or facility so affected. Owner's 48-hour notice shall be  
205 invalidated by the cessation of the strike, lockout or stoppage within this notice period. If the Vessel sails with part  
206 of the intended shipment Charterer shall pay freight only on the cargo quantity actually loaded and Owner shall  
207 have liberty to complete with other cargo en-route for their own account.
- 208 34. Force Majeure  
209 Subject to Ice Clause, Owner shall not be liable to Charterer, nor will Charterer be liable to Owner, for any delay or  
210 failure in the performance of obligations hereunder, if such failure or delay is due to or results from an act of war or  
211 the anticipated imminence thereof; restraints of rulers, governments, or people; act of terrorism; legislation,  
212 decrees, orders, regulations or the like in the country of origin or of Vessel's flag; blockade, sanctions, civil  
213 commotion, political disturbances, breakdowns, accidents, or stoppages whether total or partial, at ports, on  
214 railways, or other means of transport to or from the ports; epidemics; quarantine; Act of God; weather (including  
215 drought, fog, frosts, floods, snow, storms, tempest or washways) or any other event or occurrence of any nature  
or kind whatsoever beyond the reasonable control of Owner and/or Charterer or, in consultation with Charterer, any  
financial incapacitation of Charterer's intended buyers or other related default(s), in circumstances where, if  
relevant, alternative cargo(es) are not (in Charterer's discretion) commercially attainable.
- 216 The party whose performance of any obligation is directly affected, or who has reason to believe such  
217 performance may be affected, by reason of any of the causes referred to above shall, as promptly as possible,  
218 give notice thereof to the other party concerned in writing, and shall also within ten (10) days thereafter notify the  
219 other party concerned, in writing, of particulars of the relevant event and supply supporting evidence.
- 220 Should any of the circumstances detailed above lead to delays up to fifteen (15) days in duration, for any of the  
221 contracted cargo(es), then either Charterer or Owner, shall take reasonable steps to make good and resume with  
222 the least possible delay, compliant with their obligations under this Contract.
- 223 Should any of the circumstances detailed above lead to delays in excess of fifteen (15) days, for any of the  
224 contracted cargo(es), then either Charterer or Owner, shall have the right to cancel this Contract with fifteen (15)  
225 days written notice, without liability to either party; alternatively by mutual agreement, this Contract shall be  
suspended for the period so affected and Owner and Charterer shall negotiate and so decide whether terms of this  
Contract shall be extended beyond the original term by the period of suspension hereof.
- 226 If the cumulative Force Majeure events in any contract year total more than thirty (30) days, Charterer shall have  
227 the right to reduce the contractual number of shipments to be performed in that contractual year.
- 228 35. Taxes and Duties  
229 Owner shall pay all dues, charges and taxes customarily levied on the Vessel including any income or freight tax

- 235 applicable at loading port(s) or country, however the amount thereof may be assessed, as well as taxes levied  
236 on the freight. Charterer shall pay all dues, charges, duties and taxes customarily levied on the cargo, however  
237 the amount thereof may be assessed. Owner shall pay all canal, lock, seaway and any other river or waterway  
238 tolls, dues and charges, however the amount thereof is assessed.
- 239 36. Extra Insurance  
240 Extra insurance on the Vessel and/or cargo on account of the Vessel's ownership, flag, obsolescence, or age to be  
241 for Owner's account. Charterer may elect to deduct extra insurance on the cargo from payment of freight, in which  
242 case Charterer shall furnish evidence of payment in support of such deduction.
- 243 37. Stevedore damage  
244 At loading and discharging ports, any stevedore damage to the ship shall be settled between Owner and  
245 Stevedore(s). However, Charterer shall render all reasonable assistance to Owner in the pursuit of their claim  
246 against the Stevedore(s) for settlement of damage to the Vessel caused by the Stevedore(s).
- 247 38. Drydocking  
248 The Vessel shall not be dry-docked during the currency of this Contract except in case of emergency.
- 249 39. Deviation  
250 The Vessel shall have the liberty to deviate for the purpose of saving life or property, with leave to sail without  
251 pilot, tow or to be towed and assist Vessels or to be assisted. Salvage shall be for Owner's sole benefit.
- 252 40. Bunkering  
253 The Vessel shall have liberty as part of the contract voyage to proceed to any port or ports at which fuel is  
254 available for the purpose of bunkering at any stage of the voyage whatsoever and whether such ports are on or off  
255 the direct and/or customary route or routes between any of the loading or discharging ports named in this  
256 Contract, and may there take fuel in any quantity in the discretion of Owner even to the full capacity of the fuel  
257 tanks and pump tanks or any other compartment in which fuel can be carried, whether such amount is required or  
258 is not for the Chartered voyage.
- 259 41. Lien & Cosser  
260 All liability of Charterer shall cease on completion of loading except for payment of freight, deadfreight and/or  
261 demurrage. Owner has a lien on cargo for freight, deadfreight and/or demurrage.
- 262 42. Protection & Indemnity (P&I) Cover and Hull & Machinery Insurance.  
263 Owner undertakes as a condition that the Vessel is entered with a P&I Club for full coverage and that the Vessel's  
264 hull and machinery is fully insured and shall remain so for the duration of this Charter Party.
- 265 43. Pollution Indemnity  
266 Owner agrees to indemnify Charterer, their agents, or any other party against any liabilities which may be imposed  
267 on them or which they may incur under any statute regarding liability for pollution of waters by oil or other  
268 substances, by reason of any contravention of such statute by the Vessel, the Master or any servant or agent of  
269 Owner provided that such contravention shall not have been caused or contributed to by the party seeking to be  
270 indemnified under this Contract. Owner undertakes as a condition that the Vessel is entered in a P&I Club with  
271 cover for liabilities arising out of any contravention as aforesaid. Laytime shall not count nor shall demurrage  
272 accrue for any time lost through non-conformity with the above.
- 273 44. Health and Safety  
274 Owner shall have on board the Vessel an effective occupational health and safety policy with the objective that  
275 due care and attention is given by crew members to safe working practices in all operations pertaining to the  
276 Vessel. Owner shall have a policy regarding drug and alcohol abuse onboard the Vessel with the objective that no  
277 crew member will navigate the Vessel or operate its onboard equipment whilst impaired by drugs or alcohol. The  
278 policy will also have the objective of strictly prohibiting the possession, use, transport and distribution of illicit or  
279 non-prescribed drugs by crew members. Owner shall exercise due diligence throughout the currency of this  
280 Contract to ensure that such policies are complied with.
- 281 45. Inspection  
282 Charterer or their representative shall be allowed with masters permission which is not to be unreasonably  
283 withheld to inspect the Vessel in port at any reasonable time provided that  
284 loading or discharging operations are not affected. This inspection will be to assess the Vessel's quality of  
285 maintenance and other Operational standards. Master and crew shall extend all reasonable assistance and co-  
286 operation to Charterer or their representative. Upon request, Owner/Master to make available the Vessel's logs for  
287 inspection by Charterer or their representative.
- 288 46. Binco ISM Clause  
289 Owner shall procure that both the Vessel and "the Company" (as defined by the International Safety Management  
290 Code (ISM Code)) shall comply fully with the requirements of the ISM Code where applicable during the currency of  
291 this Contract. Upon request the Owner shall provide a copy of the relevant Document of Compliance (DOC) and  
292 Safety Management Certificate (SMC) to Charterer.
- 293 Except as otherwise provided in this Contract, loss, damage, expense or delay caused by failure on the part of  
294 Owner or "the Company" to comply with the ISM Code shall be for Owner's account.
- 295 47. ISPS Clause for Voyage Charter Parties



285 (a) (i) From the date of coming into force of the International Code for the Security of Ships and of Port Facilities  
 286 And the relevant amendments to Chapter XI of SOLAS (ISPS Code) in relation to the Vessel, Owner shall  
 287 procure that both the Vessel and "the Company" (as defined by the ISPS Code) shall comply with the  
 288 requirements of the ISPS Code relating to the Vessel and "the Company". Upon request Owner shall provide  
 289 a copy of the relevant International Ship Security Certificate (or the Interim International Ship Security  
 300 Certificate) to Charterers. Owner shall provide Charterers with the full style contact details of the Company  
 301 Security Officer (CSO).  
 302 (ii) Except as otherwise provided in this Charter Party, loss, damage, expense or delay, excluding  
 303 consequential loss, caused by failure on the part of Owner or "the Company" to comply with the requirements of  
 304 the ISPS Code or this Clause shall be for Owner's account.  
 305 (b) (i) Charterers shall provide the CSO and the Ship Security Officer (SSO)/Master with their full style contact  
 306 details and any other information Owner require to comply with the ISPS Code.  
 307 (ii) Except as otherwise provided in this Charter Party, loss, damage, expense, excluding consequential loss,  
 308 caused by failure on the part of Charterers to comply with this Clause shall be for Charterers' account and any  
 delay caused by such failure shall be compensated at the demurrage rate.

310 (c) Provided that the delay is not caused by Owner's failure to comply with their obligations under the ISPS Code,  
 311 the following shall apply:  
 312 (i) Notwithstanding anything to the contrary provided in this Charter Party, the Vessel shall be entitled to  
 313 tender Notice of Readiness even if not cleared due to applicable security regulations or measures imposed  
 314 by a port facility or any relevant authority under the ISPS Code.  
 315 (ii) Any delay resulting from measures imposed by a port facility or by any relevant authority under the ISPS  
 316 Code shall count as laytime or time on demurrage if the Vessel is on laytime or demurrage. If the delay occurs  
 317 before laytime has started or after laytime or time on demurrage has ceased to count, it shall be compensated by  
 318 Charterers at the demurrage rate.

319 (d) Notwithstanding anything to the contrary provided in this Charter Party, any additional costs or expenses  
 320 whatsoever solely arising out of or related to security regulations or measures required by the port facility or any  
 321 relevant authority in accordance with the ISPS Code including, but not limited to, security guards, launch services,  
 322 tug escorts, port security fees or taxes and inspections, shall be for Charterers' account, unless such costs or  
 323 expenses result solely from Owner's negligence. All measures required by Owner to comply with the Ship Security  
 324 Plan shall be for Owner's account.

325 (e) If either party makes any payment which is for the other party's account according to this Clause, the other  
 326 party shall indemnify the paying party.

#### 327 46. U.S. Customs Advance Notification/AMS Clause for Voyage Charter Parties

328 (a) If the Vessel loads or carries cargo destined for the US or passing through US ports in transit, Owner shall  
 329 comply with the current US Customs regulations (19 CFR 4.7) or any subsequent amendments thereto and shall  
 330 undertake the role of carrier for the purposes of such regulations and shall, in their own name, time and  
 331 expense:

- 332 i) Have in place a SCAC (Standard Carrier Alpha Code);
- 333 ii) Have in place an ICS (International Carrier Bond); and
- 334 iii) Submit a cargo declaration by AMS (Automated Manifest System) to the US Customs.

335 (b) Charterers shall provide all necessary information to Owner and/or their agents to enable Owner to submit a  
 336 timely and accurate cargo declaration.  
 337 Charterers shall assume liability for and shall indemnify, defend and hold harmless Owner against any loss  
 338 and/or damage whatsoever (including consequential loss and/or damage) and/or any expenses, fines, penalties  
 339 and all other claims of whatsoever nature, including but not limited to legal costs, arising from Charterers' failure to  
 340 comply with any of the provisions of this Sub-Clause. Should such failure result in any delay then, notwithstanding  
 341 any provision in this Charter Party to the contrary, all time used or lost shall count as laytime or, if the Vessel is  
 342 already on demurrage, time on demurrage.

343 (c) Owner shall assume liability for and shall indemnify, defend and hold harmless Charterers against any loss  
 344 and/or damage whatsoever (including consequential loss and/or damage) and any expenses, fines, penalties and  
 345 all other claims of whatsoever nature, including but not limited to legal costs, arising from Owner's failure to  
 346 comply with any of the provisions of Sub-Clause (a). Should such failure result in any delay then, notwithstanding  
 347 any provision in this Charter Party to the contrary, all time used or lost shall not count as laytime or, if the Vessel is  
 348 already on demurrage, time on demurrage.

349 (d) The assumption of the role of carrier by Owner pursuant to this Clause and for the purpose of the US  
 350 Customs Regulations (19 CFR 4.7) shall be without prejudice to the identity of carrier under any Bill of  
 351 Lading, other contract, law or regulation.

352 49. Protective Clauses  
 353 Clauses 50 to 53 inclusive shall also be deemed to be incorporated into this Contract and all Bills of Lading issued  
 354 hereunder.

#### 355 50. Clause Paramount

356 This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United  
 357 States, the Hague Rules, the Hague-Visby Rules or the Hamburg Rules, as compulsorily applicable, or such other  
 358 similar national legislation as may apply by virtue of origin or destination of the Bills of Lading, which shall be  
 359 deemed to be incorporated herein and nothing herein contained shall be deemed a surrender by the carrier of any

of its rights or immunities or an increase of any of its responsibilities or liabilities under said applicable Act. If any term of this Bill of Lading be repugnant to said applicable Act to any extent, such term shall be void to that extent, but no further."

And

**61. Both to Blame Collision**

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the carrier against all loss or liability to the other or non-carrying ship or her owners insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier.

The foregoing provisions shall also apply where the owners, operators or those in charge of any ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact."

And

**62. New Jason**

"In the event of accident, danger, damage or disaster before or after the commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the carrier is not responsible, by statute, contract, or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifice, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods.

If a saving ship is owned or operated by the carrier, salvage shall be paid for as fully as if saving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery."

**63. "Voywar 93" Clause**

(1) For the purpose of this Clause, the words:

(a) "Owners" shall include the shipowners, bareboat charterers, disponent owners, managers or other Operators who are charged with the management of the Vessel, and the Master; and

(b) "War Risks" shall include any war (whether actual or threatened), act of war, civil war, hostilities, revolution, rebellion, civil commotion, warlike operations, the laying of mines (whether actual or reported), acts of piracy, acts of terrorism, acts of hostility or malicious damage, blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise (however), by any person, body, terrorist or political group, or the Government of any state whatsoever, which, in the reasonable judgement of the Master and/or Owners, may be dangerous or are likely to be or to become dangerous to the Vessel, her cargo, crew or other persons on board the Vessel.

(2) If at any time before the Vessel commences loading, it appears that, in the reasonable judgement of the Master and/or Owners, performance of the Contract of Carriage, or any part of it, may expose, or is likely to expose, the Vessel, her cargo, crew or other persons on board the Vessel to War Risks, Owners may give notice to Charterers cancelling this Contract of Carriage, or may refuse to perform such part of it as may expose, or may be likely to expose, the Vessel, her cargo, crew or other persons on board the Vessel to War Risks; provided always that if this Contract of Carriage provides that loading or discharging is to take place within a range of ports, and at the port or ports nominated by Charterers the Vessel, her cargo, crew, or other persons on board the Vessel may be exposed, or may be likely to be exposed, to War Risks, Owners shall first require Charterers to nominate any other safe port which lies within the range for loading or discharging, and may only cancel this Contract of Carriage if Charterers shall not have nominated such safe port or ports within 48 hours of receipt of notice of such requirement.

(3) Owners shall not be required to continue to load cargo for any voyage, or to sign Bills of Lading for any port or place, or to proceed or continue on any voyage, or on any part thereof, or to proceed through any canal or Waterway, or to proceed to or remain at any port or place whatsoever, where it appears, either after the loading of the cargo commences, or at any stage of the voyage thereafter before the discharge of the cargo is completed, that, in the reasonable judgement of the Master and/or Owners, the Vessel, her cargo (or any part thereof), crew or other persons on board the Vessel (or any one or more of them) may be, or are likely to be, exposed to War Risks. If it should so appear, Owners may by notice require Charterers to nominate a safe port for the discharge of the cargo or any part thereof, and if within 48 hours of the receipt of such notice, Charterers shall not have nominated such a port, Owners may discharge the cargo at any safe port of their choice (including the port of loading) in complete fulfillment of the Contract of Carriage. Owners shall be entitled to recover from Charterers the extra expenses of such discharge and, if the discharge takes place at any port other than the loading port, to receive the full freight as though the cargo had been carried to the discharging port and if the extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route. Owners having a lien on the cargo for such expenses and freight.

423 (4) If at any stage of the voyage after the loading of the cargo commences, it appears that, in the reasonable  
424 judgement of the Master and/or Owners, the Vessel, her cargo, crew or other persons on board the Vessel may  
425 be, or are likely to be, exposed to War Risks on any part of the route (including any canal or waterway) which is  
426 normally and customarily used in a voyage of the nature contracted for, and there is another longer route to the  
427 discharging port, Owners shall give notice to Charterers that this route will be taken. In this event Owners shall be  
428 entitled, if the total extra distance exceeds 100 miles, to additional freight which shall be the same percentage of  
429 the freight contracted for as the percentage which the extra distance represents to the distance of the normal and  
430 customary route.

431 (5) The Vessel shall have liberty:-

432 (a) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in  
433 convoy, ports of call, stoppages, destinations, discharge of cargo, delivery or in any way whatsoever which are  
434 given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose laws  
435 Owners are subject, or any other Government which so requires, or any body or group acting with the power to  
436 compel compliance with their orders or directions;

437 (b) to comply with the orders, directions or recommendations of any war risks underwriters who have the  
438 Authority to give the same under the terms of the war risks insurance;

439 (c) to comply with the terms of any resolution of the Security Council of the United Nations, any directives of  
440 the European Community, the effective orders of any other Supranational body which has the right to issue and  
441 give the same, and with national laws aimed at enforcing the same to which Owners are subject, and to obey the  
442 orders and directions of those who are charged with their enforcement;

443 (d) to discharge at any other port any cargo or part thereof which may render the Vessel liable to confiscation  
444 as a contraband carrier;

445 (e) to call at any other port to change the crew or any part thereof or other persons on board the Vessel when  
446 there is reason to believe that they may be subject to internment, imprisonment or other sanctions;

447 (f) where cargo has not been loaded or has been discharged by Owners under any provisions of this Clause,  
448 to load other cargo for Owner's own benefit and carry it to any other port or ports whatsoever, whether backwards  
449 or forwards or in a contrary direction to the ordinary or customary route.

450 (6) If in compliance with any of the provisions of Sub-Clauses (2) to (5) of this Clause anything is done or not  
451 done, such shall not be deemed to be a deviation, but shall be considered as the fulfilment of the  
452 Contract of Carriage.

#### 453 54. General Average

454 Any General Average occurring under this Contract is to be adjusted, stated and settled in London according to  
455 York-Antwerp Rules 1994 and any subsequent amendments thereto, according to English law and practice.

#### 456 55. Japanese Trading Clause

457 Owner undertakes as a condition that the Vessel shall have on board a valid International Group of P&I Clubs  
458 certificate of insurance issued by MOLIT (Ministry of Land, Infrastructure and Transport) (Japan) as required under  
459 Japanese law. Owners shall ensure full compliance with all Japanese reporting obligations required under  
460 Japanese law. Further and without prejudice to Charterer's other legal rights, Owner shall indemnify Charterer  
461 against all consequences arising out of non-compliance with this provision.

#### 462 56. Ice Clause

463 The Vessel shall not be obliged to force ice but, subject to Owner's approval and having due regard to its size,  
464 construction and class, may follow ice-breakers when reasonably required.

#### 465 (a) Port of Loading

466 (i) If at any time after sailing out on the approach voyage the Vessel's passage is impeded by ice, or if on  
467 arrival the loading port is inaccessible by reason of ice, the Master or Owner shall notify Charterers thereof and  
468 request them to nominate a safe and accessible alternative port.

469 If Charterers fail within 48 running hours, Sundays and holidays included, to make such nomination or agree  
470 to reckon laytime as if the port named in the contract were accessible or declare that they cancel this Charter  
471 Party, Owner shall have the option of cancelling this Charter Party.

472 (ii) If at any loading port the Master considers that there is a danger of the Vessel being frozen in, and  
473 provided that the Master or Owner immediately notify Charterers thereof, the Vessel may leave with cargo loaded  
474 on board and proceed to the nearest safe and ice free place and there await Charterer's nomination of a safe and  
475 accessible alternative port within 24 running hours, Sundays and holidays included, of the Master's or Owner's  
476 notification. If Charterers fail to nominate such alternative port, the Vessel may proceed to any port(s), whether  
477 or not on the customary route for the chartered voyage, to complete with cargo for  
478 Owner's account.

#### 479 (b) Port of Discharge

480 (i) If the voyage to the discharging port is impeded by ice, or if on arrival the discharging port is inaccessible  
481 by reason of ice, the Master or Owner shall notify Charterers thereof. In such case, Charterers shall have the  
482 option of keeping the Vessel waiting until the port is accessible against paying compensation in an amount  
483 equivalent to the rate of demurrage on entering the Vessel to a safe and accessible alternative port.  
484 If Charterers fail to make such declaration within 48 running hours, Sundays and holidays included, of the  
485 Master or Owner having given notice to Charterers, the Master may proceed without further notice to the nearest  
486 safe and accessible port and there discharge the cargo.

487 (ii) If at any discharging port the Master considers that there is a danger of the Vessel being frozen in, and  
488 provided that the Master or Owner immediately notify Charterers thereof, the Vessel may leave with cargo



- 488 remaining on board and proceed to the nearest safe and ice free place and there await Charterer's nomination of a  
489 safe and accessible alternative port within 24 running hours, Sundays and holidays excluded, of the Master's or  
490 Owner's notification. If Charterers fail to nominate such alternative port, the Vessel may proceed to the nearest  
491 safe and accessible port and there discharge the remaining cargo.  
492 (B) On delivery of the cargo other than at the port(s) named in the contract, all conditions of the Bill of Lading  
493 shall apply and the Vessel shall receive the same freight as if discharge had been at the original port(s) of  
494 destination, except that if the distance of the substituted port(s) exceeds 100 nautical miles, the freight on the  
495 cargo delivered at the substituted port(s) shall be increased proportionately.  
496
- 497 **57. Dispute Resolution**  
498 This Contract shall be governed by and construed in accordance with English law. Should the parties fail to reach  
499 a prompt amicable settlement (and without prejudice to either party's rights to obtain urgent judicial relief), the  
500 parties hereby agree to refer all disputes to mediation. Unless the parties agree forthwith on the appointment of a  
501 mediator, the parties hereby agree that the Honorary Secretary of the London Maritime Arbitrators Association, on  
502 request of either party, is to appoint a mediator.
- 503 In the event that mediation is either rejected by one party or does not lead to a resolution within twenty-one days,  
504 following the appointment of a mediator (unless the period is mutually extended), any dispute shall be resolved by  
505 London arbitration as provided below.
- 506 (1) All disputes arising out of or relating to this Contract where the total amount claimed (excluding interest and  
507 costs) by either party does not exceed US\$75,000 - shall be referred to arbitration in London and that reference  
508 shall be in accordance with the LMAA Small Claims Procedure.
- 509 (2) All other disputes, unless the parties agree forthwith on a single arbitrator, shall be referred to the final  
510 arbitration of two arbitrators carrying on business in England who shall be members of the Baltic  
511 Exchange and engaged in shipping and/or grain trades, one to be appointed by each of the parties  
512 with the power to such arbitrators to appoint an umpire.
- 513 All claims under this Contract must be made in writing and any arbitration commenced within one year of final  
514 discharge and where this provision is not complied with the claim(s) shall be deemed to be waived and absolutely  
515 barred. No arbitral award shall be questioned or invalidated on the ground that any of the arbitrators is not qualified  
516 as above unless objection to his acting is taken within seven days of his appointment.
- 517 The parties are entitled, at any stage, to commence arbitration (so as to preserve time) notwithstanding ongoing  
518 amicable negotiation or mediation.
- 519 **58. Cargo Survey**  
520 If required for steel products or manufactured or packaged cargo only a pre-shipment and an on-board survey shall  
521 be carried out by surveyors mutually agreed between Owner and Charterers with the costs shared equally.  
All time and costs for pre-load vessel inspections for Owners account.
- 522 **59. Part Cargo**  
523 If part cargo is allowed, Owners may tender Notice of Readiness in accordance with the provisions of this Charter  
524 Party, notwithstanding that other part cargo(es) may be loaded or discharged first, time used for the loading or  
525 discharging of other part cargo(es) shall not count as laytime or ex time on demurrage under this Charter Party.  
526 Any time used in shifting between the different berths for loading or discharging of part cargo(es) shall not count  
527 as laytime or as time on demurrage.
- 528 **60. Commissions**  
529 An address commission as stated in Box 22 on the gross amount of freight, deadfreight and/or demurrage shall be  
530 deducted by Charterer upon payment of same. Brokerage as stated in Box 23 on the freight, deadfreight and/or  
531 demurrage shall be due to the broker named in Box 23 upon payment of same and is payable by Owner.
- 532 **61. Termination on Bankruptcy of Either Chartering Party**  
533 The following provision shall apply to this Charter Party only if there is not in force between the parties an effective  
534 netting agreement in respect of all outstanding Transactions (as defined below) between them. The provision shall  
535 not apply to, or be incorporated into, any Bill of Lading.
- 536 (a) The parties to this Charter Party agree that if at any time a Bankruptcy Event (as defined below) occurs in  
537 relation to either of them (the "Defaulting Party"), the other party (the "Non-Defaulting Party") may by not more than  
538 20 days' notice to the Defaulting Party designate a close-out date in respect of all Transactions then outstanding  
539 between them on which the process set out in paragraph (c) shall occur (subject to paragraph (c)  
540 below).
- 541 (b) As of the close-out date (i) all performance obligations of the parties under outstanding Transactions shall  
542 terminate (ii) the Non-Defaulting Party shall promptly calculate its Loss (as described below) in respect of each  
543 Transaction (iii) the Losses so calculated shall be aggregated and netted to the greatest extent possible (and, in  
544 order to effect this, the Non-Defaulting Party may convert any such Losses at commercially reasonable rates into  
545 such currency as may be required) and (iv) the net resulting amount, if positive, shall be paid by the Defaulting  
546 Party to the Non-Defaulting Party within 3 days of the close-out date. If the net resulting amount is negative, no  
547 amount shall be due from or payable by either party to the other. Interest on the net resulting amount shall accrue  
548 at the rate of overnight LIBOR plus 5% if such amount is not paid when due.
- 549 (c) A close-out date (as described above) shall occur automatically as of the time immediately before the start of

550 a Sanctioning Event specified in paragraph (1), (3), (4), (5), (6) or, to the extent analogous, (8) of that  
551 definition.

552 (d) The parties to this Charter Party acknowledge and agree that the Transactions between them form a single  
553 agreement and have entered into the Transactions on this basis.

554 52. **Set-off**

555 Following a default by either party hereunder (the "Defaulting Party") the other party (the "Non-defaulting Party")  
556 shall be entitled, at its option, to set-off any amounts believed in good faith and on reasonable grounds by the  
557 Non-defaulting Party to be payable (whether at such time or in the future or upon the occurrence of a contingency)  
558 by the Defaulting Party to the Non-defaulting Party (whether under this Contract or otherwise), against any  
559 amounts believed in good faith and on reasonable grounds by the Non-defaulting Party to be payable (whether at  
560 such time or in the future or upon the occurrence of a contingency) by the Non-defaulting Party to the Defaulting  
561 Party (whether under this Contract or otherwise), irrespective of the currency, place of payment or booking office  
562 of either party's obligations and the parties' respective obligations shall be discharged pro tanto and in all respects  
563 to the extent they are so set-off. The Non-defaulting Party will give 3 (three) days prior notice to the Defaulting  
564 Party of any intended set-off to be effected under this provision. For this purpose, any such amount payable by  
565 one party to the other (or the relevant portion of such amount) may be converted by the Non-defaulting Party,  
566 acting in good faith and in a commercially reasonable manner, into such currency as may reasonably be required  
567 in order to effect such set-off at an exchange rate determined by the Non-defaulting Party acting in good faith and  
568 in a commercially reasonable manner. If an obligation is unascertained, the Non-defaulting Party may in good faith  
569 estimate that obligation and set off in respect of the estimate, subject to the relevant party accounting to the other  
570 when the obligation is ascertained. The right of the Non-defaulting Party under this provision shall apply without  
571 prejudice to Clause 51 or any other right of set-off which it may have whether by agreement, operation of law or  
572 otherwise. Nothing in this provision shall be effective to create a charge or other security interest.

573 53. **Attachments**

574 The BHP Billiton Vetting questionnaire duly completed by Owner for the performing vessel, Appendices A, B, C  
575 and Rider Clauses .... to .... as attached are deemed to be fully incorporated in the Contract and to form part of  
576 it.

577

OWNER:

For and on behalf of  
Jebens Trans-Pacific Shipping  
Services AS Bergen

JEBENS INTERNATIONAL (AUSTRALIA) PTY LTD  
AS AGENTS ONLY

CHARTERER:

For and on behalf of  
BHPB FREIGHT PTY LTD

## Appendix A

## VESSEL'S DESCRIPTION AND OTHER DETAILS

Name: \_\_\_\_\_  
 Previous Names: \_\_\_\_\_  
 Call Sign/Telex/Facsimile numbers: \_\_\_\_\_  
 Type of Vessel: \_\_\_\_\_  
 Date of Build: \_\_\_\_\_ Shipyard where built: \_\_\_\_\_ Flag: \_\_\_\_\_  
 Classed: \_\_\_\_\_ at: \_\_\_\_\_  
 DWT: \_\_\_\_\_ on \_\_\_\_\_ summer salt water draft  
 LOA: \_\_\_\_\_ Beam: \_\_\_\_\_ moulded Depth: \_\_\_\_\_  
 TPC/TPH: \_\_\_\_\_  
 Number of holds & hatches: \_\_\_\_\_  
 Vessel's Ballast holds (sea/port): \_\_\_\_\_  
 Air draft (Distance from waterline to top of hatch coaming) to \_\_\_\_\_  
 Normal Ballast condition: \_\_\_\_\_  
 Fully Laden condition: \_\_\_\_\_  
 Type of Hatchcovers: \_\_\_\_\_  
 Hatch dimensions in main deck (and tween deck if applicable): \_\_\_\_\_  
 P&I Club and current Hull & Machinery value: \_\_\_\_\_  
 Applicable to Handysize and geared Panamax Vessels:  
 Number & Type and manufacturer of cargo gear: \_\_\_\_\_  
 Capacity of gear under hook: \_\_\_\_\_  
 Is Vessel grabs fitted (yes/no): (If applicable type of grabs and capacity): \_\_\_\_\_  
 Flat tanktop dimensions in metres: \_\_\_\_\_  
 Tanktop strength in metric tons per square metre: \_\_\_\_\_  
 Can Vessel's hold ladders be continuously accessed from the holds between a  
 Height of 2-6 metres above the tanktop? \_\_\_\_\_  
 Grain and Bale Capacities total and per hold (OBM) (plus Hatchcoverings if  
 Capable/Panamax/OBO/Orecarrier): \_\_\_\_\_  
 Normal Operating speeds in ballast and laden: \_\_\_\_\_  
 Applicable to Very Large, Capesize and Panamax Bulkcarriers, Ore carriers and OBOs.  
 Dunkirk East Sustrable: Yes/No  
 Redox suitable: Yes/No  
 Vessel is/is not described as being sex tonning

## Appendix B

Banking Details	
Beneficiary's Name	
Address	
Post Code	
City	
Country	
Account Number (USD Acct)	
Beneficiary Bank	
Address	
Postal Code	
City	
Country	
Sort Code/ABA etc	
Swift Code	
Intermediary Bank	
Address	
Post Code	
City	
Country	
Sort Code/ABA etc	
Swift Code	

## Appendix C

## Defined Terms

In Clause 61 of this Contract:

"**Bankruptcy Event**" shall have the meaning set out in Section 5(a)(vi) of the 1992 ISDA Master Agreement (Multicurrency-Cross Border) as published by the International Swaps and Derivatives Association, Inc. and shall apply in relation to either party, or any entity (other than a bank) providing a guarantee, cash or other collateral or credit enhancement in support of that party's obligations to the other party under one or more Transactions.

"**Loss**" means the amount that the Non-Defaulting Party reasonably determines in good faith to be its losses and costs (or gain, in which case expressed as a negative number) in connection with the termination of the Transaction. Loss shall include the value of any and all amounts payable or required to be delivered to either party in respect of the Transaction, but unpaid or undelivered (as the case may be). Loss may, in the reasonable discretion of the Non-Defaulting Party, include all or any of the following, without duplication: (i) any loss of bargain (ii) cost of funding (iii) loss or cost incurred as a result of its terminating, liquidating, obtaining or re-establishing any related trading position (or any gain resulting from any of them). The Non-Defaulting Party may calculate Loss by reference to (aa) the quotations (whether firm or indicative) of relevant prices or rates from leading independent participants in the relevant markets that may take into account the creditworthiness of the Non-Defaulting Party and any other relevant factors or (bb) relevant market data and information (including price models) whether derived from external or internal sources. The same valuation method need not be used for all Transactions.

"**Transaction**" means any physically or cash-settled trade or agreement (including any master agreement where the context so allows and any option) between the parties in respect of freight, hire, coal, any precious or non-precious metal, oil or any related product, natural gas, electricity, emissions allowances or green credits, any weather factor or any other commodities or products similar to any of the foregoing.

EXHIBIT "2"



**Mary E. Fedorchak**

---

**From:** Sowunmi, Kunbi [Kunbi.Sowunmi@bhpbilliton.com]  
**Sent:** Wednesday, January 09, 2008 11:13 AM  
**To:** Sowunmi, Kunbi  
**Subject:** FW: Jepsens sulphur 2008 (option declared)

---

**From:** wendyr@jepsens.com.au [mailto:wendyr@jepsens.com.au]  
**Sent:** Tuesday, August 14, 2007 7:27 AM  
**To:** Handy Pacific Chartering  
**Cc:** Handy Pacific Chartering; scallinan\_moore@jepsens.com.au  
**Subject:** RE: Jepsens sulphur 2008 (option declared)

Bruce

confirming receipt of chtrs declaration to extend sulphur COA for further 12 months.

Sorry abt the time lapse.

thnks & rgds  
Wendy

"Handy Pacific Chartering" <hpc@bhpbilliton.com>

To: <scallinan\_moore@jepsens.com.au>, <wendyr@jepsens.com.au>

14/08/2007 02:46 PM

cc: "Handy Pacific Chartering" <hpc@bhpbilliton.com>

Subject: RE: Jepsens sulphur 2008 (option declared)

Wendy/B,  
Could you please give us your confirmation as per below ?  
Thanks,  
BE

-----Original Message-----

**From:** Handy Pacific Chartering  
**Sent:** Monday, 13 August 2007 10:14 AM  
**To:** 'scallinan\_moore@jepsens.com.au'; 'wendyr@jepsens.com.au'  
**Cc:** Handy Pacific Chartering  
**Subject:** Jepsens sulphur 2008 (option declared)  
**Importance:** High

Wendy/B,  
Pleased to confirm that Charterers declare further 12 months of this COA  
(01-Jan-08 to 31-Dec-08).  
Could Owners please re-confirm accordingly ?  
Regards,  
Bruce Sleworth

1/9/2008

BRPB Freight

-----Original Message-----

From: Randy Pacific Chartering  
Sent: Tuesday, 29 August 2007 9:28 AM  
To: 'eric.boisseau@jehsena.com.au'; 'acallinan\_moore@jehsena.com.au';  
'wandy@jehsena.com.au'  
Cc: Randy Pacific Chartering  
Subject: Rates - Sulphur 2007 & 2008 Maintenance

Eric / Peter

We pleased to recap maintenance agreed so far as follows

a/c: BRPB Freight Pty Ltd for and on behalf of BHP Billiton Marketing  
Inc  
Owners: Johnson International, Melbourne, Australia

1. 6 Months term (1 January 2007 to 30 June 2007) with a further 6 months (1 July 2007 to 31 December 2007) in CHOFT to be declared by April 1st 2007, with a further optional 1 year in CHOFT (1 January 2008 to 31 December 2008) which shall be declarable by December 1st, 2007.
2. Load ports: Vancouver BC: 1 or 2 safe berth in CHOFT(s), always afloat or in Charterers option Port Moody; 1 or 2 safe berth(s), in CHOFT always afloat or in Charterers option Vancouver BC 1 safe berth and Port Moody 1 safe berth in CHOFT, always afloat.
3. Load terms: 12,000mt WND SHINC, NOR ATONSHINC, 12HRS TT, USC ICATUTC
4. Discharge: 1 at Esperance 8,000mt WND SHINC, NOR ATONSHINC, 12HRS TT, USC ICATUTC  
(Comment: Townsville & Adelaide as per COA) Discharge port(s): in line with agreement of point 2 above, the Charterparty wording for discharge port should be amended as follows:  
  
Townsville: 1 safe berth, always afloat  
Adelaide: 1 safe berth, always afloat  
Esperance: 1 safe berth, always afloat  
  
Delete as per a/p Clause 4, DISCHARGING
5. For Esperance only liftings Charterers to give Owners 45 days notice of required 7 day laycan.
6. Freight rates for 12mo period 1 Jan 07 to 30 Jun 07 & CHOFT optional period 1 July 07 to 31 Dec 07

a) Owners and Charterers have agreed to apply the following freight rates for the tonnage as per below:

Freight (basis free in/out)  
USD\$41.10 pmt for Townsville  
USD\$43.29 pmt for Adelaide  
USD\$43.19 pmt for Townsville & Adelaide  
USD\$49.10 pmt for Townsville & Esperance USD\$49.10 pmt for Adelaide & Esperance

Charterers have the option to declare Esperance only liftings:

15,000mt +/- 5 % CHOFT	USD\$47.40 pmt
25,000mt +/- 5 % CHOFT	USD\$44.75 pmt
28,000mt +/- 5 % CHOFT	USD\$41.90 pmt

- b) Owners have the liberty to use the following 3 vessels, with owners to pay max London Lloyd's over age premium:
- M.v. General Villa - gentry - built 1985
  - M.v. General Dulgado - gentry - built 1985
  - M.v. Cleopatra - crane - built 1985

1/9/2008

Freight (basis free in/out)  
 USD\$39.10 pmt for Townsville  
 USD\$43.20 pmt for Adelaide  
 USD\$41.10 pmt for Townsville & Adelaide  
 USD\$47.10 pmt for Townsville & Esperance USD\$47.10 pmt for Adelaide & Esperance

7. Freight rates for optional period 1 Jan 08 to 31 Dec 08

a) Owners and Charterers have agreed to apply the following freight rates for the voyage as per below:

Freight (basis free in/out)  
 USD\$42.55 pmt for Townsville  
 USD\$44.75 pmt for Adelaide  
 USD\$44.65 pmt for Townsville & Adelaide  
 USD\$50.65 pmt for Townsville & Esperance  
 USD\$50.65 pmt for Adelaide & Esperance

Charterers have the option to declare the option for Esperance only listings:

15,000mt +/- 5 % CHOFT	USD\$48.95 pmt
25,000mt +/- 5 % CHOFT	USD\$45.95 pmt
28,000mt +/- 5 % CHOFT	USD\$43.45 pmt

b) Owners have the liberty to use the following 3 vessels, with owners to pay max London Lloyd's over age premium  
 - M.V. General Villa - gantry - built 1985  
 - M.V. General Delgado - gantry - built 1985  
 - M.V. Ciclope - crane - built 1985

Freight (basis free in/out)  
 USD\$40.55 pmt for Townsville  
 USD\$42.75 pmt for Adelaide  
 USD\$42.65 pmt for Townsville & Adelaide  
 USD\$48.65 pmt for Townsville & Esperance  
 USD\$48.65 pmt for Adelaide & Esperance

-Shifting time between berths when shift is required to continue or complete, loading or discharging cargo being carried under this COA to count as laytime.

-Charterers' Agents bonds as per current COA dated 5th December 2005.

-Charterers' berth at discharge ports.

-Charterers shall provide a 6-month period tentative shipping schedule which to be tentatively updated on a monthly basis (as per current COA).

8. Sub Charterers BOD approval declarable by 17:00hrs Melbourne time Friday 1st September 2006

9. Otherwise as per current C.O.A dated 5th December 2005.

END

Regards

This message and any attached files may contain information that is confidential and/or subject of legal privilege intended only for use by the intended recipients. If you are not the intended recipient or the person responsible for delivering the message to the intended recipient, be advised that you have received this message in error and that any dissemination, copying or use of this message or attachment is strictly forbidden, as is the disclosure of the information therein. If you have received this message in error please notify the sender immediately and delete the message.

1/9/2008

EXHIBIT "3"

## Jebsens Trans-Pacific Shipping Services AS

Sandbrugt 5  
P.O. Box 8994, Droggen  
5835 Bergen, Norway

Telephone Number: (+47) 530 60 000  
Fax Number: (+47) 530 50 051  
Webster: [www.jebss.com](http://www.jebss.com)  
Reg.no. 875416245-VAT

Mr. Niels Wage - Vice President  
BHP Billiton Marketing B.V.  
Verheeskade 25, 2521 BE  
P O Box 19511, 2500 CM  
The Hague  
The Netherlands

Bergen, 20 December 2007  
BJ/mwj

Dear Mr. Wage,

I refer to my letter of 17 December and to your email of 18 December 2007.

I note your comments regarding the contractual commitments of JTSS. I have already made you aware of the factual circumstances which make it impossible for JTSS to perform the contracts on its current terms. These circumstances have not changed and JTSS therefore remains unable to meet the January nomination.

You make reference in your email to taking steps against a "parent company" of JTSS. Please note that JTSS is an independent corporate entity. Neither its shareholders nor any other corporate entity bears any responsibility for the debts of JTSS. Under the circumstances, there is simply no possibility of bringing a claim against a third party.

As to your comments concerning security, you should be aware that JTSS does not own any vessels. BHPB therefore has no right to arrest any vessels in connection with the alleged claim against JTSS. Any such arrest would be wrongful and all losses or expenses arising out of that arrest would be recoverable from BHPB.

Although I am aware that you continue to have reservations, I still feel that it would be beneficial for us to meet as soon as possible in The Hague to discuss these matters further in the hopes of finding a mutually acceptable way forward. I appreciate that reaching a commercial solution may require you to obtain some support from our shareholders. You may wish us to enter into a deal with more long term benefits for BHPB or to consider other possible arrangements. These are issues that might be discussed more easily in person.

We look forward to hearing from you.

Yours sincerely,  
JEBSENS TRANS-PACIFIC SHIPPING SERVICES AS

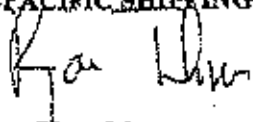
  
Bjørn Jebsen

EXHIBIT "4"

BHPB Freight Pty Ltd

## INVOICE

JCMVDFI UP:1 KFCFOT USBOT: QBDUGI TI JQJQHI TFSWDF  
BT: QFSMFO: OPSXEBZ

JCMVDFI UP:1

41927636

Buufouj po Bddpvout! Qzbcnf! Ef qbsunfou!

Eduf 13. KBO 3119  
Dvtupnf sl S'gl Qp/!

Pej hj obupe! S'gfsf oaf! VBVEMK

LFSNF:1 Qm/bt! :qb2! cz! 09-JAN-2008

VFTTFM CBNF: OPTI MBEFSI

VOY NO. 65453

GSFJH UI EJ GFSFODF

USD

GSFJH UI EJ GFSFODF TOPU! DFB  
UPUBM

Amount	Exchange Rate
2,058,300.00 USD	1.000
1113-169-411/11: VTE	2,058,300.00

UPUSM BNPVQU

BHPB Freight Pty Ltd

2,058,300.00

For & on behalf of BHPB Freight Pty Ltd

Please pay by Telegraphic Transfer quoting invoice number 80216524 to:  
BANK OF AMERICA N.A.  
LONDON E14 5AQ, GREAT BRITAIN

For the credit of:

BHPB Freight Pty Ltd

Account Number 6008 65022015

SWIFT: BOFA22 IBAN: GB36 BOFA 1650 5065 0220 15

Please email remittance advice quoting Invoice no. &amp; its details to:

BHPB Freight Pty Ltd

For queries regarding these  
charges pls contact:  
J Valaitis

APN No. - 83 005 485 548

Status

DR



EXHIBIT "5"

**FREIGHT DIFFERENTIAL**

Freight rate under the COA:	\$42.65
Freight rate for substitute vessel (POS LEADER):	\$157.00
Freight:	18,000 mt
Difference in rates:	$157 - 42.65 = 114.35$
Freight differential:	$\$114.4 \times 18,000\text{mt} = 2,058,300.00$